

CBIC issues guidance note for verification of the transitional credits

12 November 2022



Summary

In order to ensure uniformity in the implementation of the Supreme Court (SC) directions, the Central Board of Indirect Taxes and Customs (CBIC) has issued guidelines for verification of the transitional credits availed by the applicants by filing/revising the form TRAN-1/2 (transitional forms). The CBIC has clarified that in case of no change in the filed/revised transitional form in comparison to the previously filed forms, the claim would be liable for rejection by the officer. However, in other cases, the jurisdictional tax officer (JO) shall proceed for the verification of the claim. The JO shall pass a reasoned order within 90 days from 1 December 2022. Further, the CBIC has issued a guidance note for verification of credit wherein it has suggested the list of checks in relation to the entries provided in form Tran-1, based on the provisions of law, the likely error and the inputs received from the field formations.

The CBIC has issued circular no. 182/14/2022-GST dated 10 November 2022 providing the guidelines for verifying the transitional credit. With respect to the verification of transitional credit, the JO may refer to the guidance note provided in Annexure I of the circular. The guidance note includes the description of entries in form Tran-1 and the list of checks for verification of such entries. The indicative list of checks for verification of credit along with the description of entries are discussed as below-

Tables of form Tran-1	Relevant sections of the CGST Act, 2017	Indicative list of nature of credit	Checks
Table 5(a)	Section 140(1), 140(4)(a) and 140(9)	Details of the central value added tax (CENVAT) credit carried forward in the return for the period ending 30 June 2017	<ul style="list-style-type: none"> • Credit taken against closing balance of CENVAT credit in ER-1/2/3 or ST-3 • Credit should not include education/secondary education cess/Krishi Kalyan Cess (KKC)/Swachh Bharat Cess (SBC) • Credit of value-added tax (VAT) and personal ledger account (PLA) balance is not allowed as transitional credit • Filing of returns for the last six months
Table 6(a)	Section 140(2)	Detail of unavailed credit of capital goods	<ul style="list-style-type: none"> • Credit on capital goods not availed in any return can only be taken in this table • Credit of capital goods (second installment) taken through Table 5(a) cannot be availed in Table 6 • Credit of entire amount on capital goods cannot be availed if same was not availed earlier
Entry 7A in Table 7(a)	Section 140(3), 140(4)(b), 140(6) and 140(7)	Credit claim by new taxpayers or taxpayers who were either not registered/ were not part of CENVAT credit chain earlier	<ul style="list-style-type: none"> • Where credit pertains to exempted goods, provisions of Rule 6 of CENVAT Credit Rules (CCR) has to be followed <ul style="list-style-type: none"> Case I - Only exempted goods/services were being manufactured or provided <ul style="list-style-type: none"> ○ Credit cannot flow from return ○ Entry in table 5(a) should be NIL ○ Only credit of inputs and inputs contained in semi-finished existed in stock on the transition day, fulfilling the conditions prescribed would be available. ○ In case the stock reported is very high, verification using VAT return, or any other collateral document can be done.

Tables of form Tran-1	Relevant sections of the CGST Act, 2017	Indicative list of nature of credit	Checks
			<p>Case II - Exempted and non-exempted goods/ services were being manufactured/provided</p> <ul style="list-style-type: none"> ○ Credit in Table 5(a) would flow from the return ○ Rule 6(3) of CCR should be applied for credit ○ In case of inputs which were in stock and not attributed till the date of transition, the conditions prescribed must be satisfied to avail credit <ul style="list-style-type: none"> • In case a new taxpayer has availed credit using credit transfer document (CTD), such CTD issued by the manufacturer should exist and be in terms of specified rule
Entry 7B in Table 7(a)	Proviso to Section 140(3) and Rule 117(4)	Credit claim by new taxpayers (e.g. traders)	<ul style="list-style-type: none"> • Appropriateness of the credit on stock as eligible for credit under rule 117(4) of the CGST Rules • Credit for this stock would be available after sale and after filing of TRAN-2 • Electronic credit ledger (ECRL) would be populated basis form TRAN-2, and not through TRAN-1 • Details of stock or credit avilment should not be declared in any other table • In case of traders, credit cannot exist in any other table
Table 7(b)	Section 140(5), 140(7)	Transitional credit taken on such inputs or input services which were received after 1 July 2017, but taxes were paid under the pre-GST regime	<ul style="list-style-type: none"> • Availability of duty-paying documents • Confirmation from the taxpayers that the document was recorded in books of accounts • Transport verification in case goods under movement are in excessive quantity • Satisfaction of conditions for availing ISD credit.
Table 8	Section 140(8)	Centrally registered unit whose CENVAT credit carried forward is captured in table 5(a) and a part/full of such credit can be distributed through table 8	<ul style="list-style-type: none"> • Distribution of credit by the centralised registered units through this table • The receiving unit not required to file TRAN-1 • Confirmation from the centrally registered units that resultant credit was reduced by the credit amount distributed through this table
Table 11	Section 142(11)(c) read with Rule 118 of CGST Rules	Transition of credit w.r.t. supplies on which both VAT and Service Tax were paid in pre-GST, but the supply is made under GST	<ul style="list-style-type: none"> • Service tax claimed as credit was paid under the existing laws • Supplies made under GST regime • Credit of VAT cannot be taken as CGST credit and vice-versa
General Check			<ul style="list-style-type: none"> • Credit claimed in TRAN-1/2 cannot be reported in form GSTR-3B. • Disputed credit carried forward cannot be utilised • Blocked credit cannot be transitioned

Key points for verification of the transitional credit

- The verification process shall start immediately upon earlier of the availability of the form on the back-office system of the JO or receipt of a self-certified downloaded copy of the same.
- The form filed, without any change, shall be liable for rejection.
- Where transitional credit has the component of both central and state/UT tax, the relevant JO shall refer the claim of state/UT tax to the counterpart state/UT tax officer for verification.
- In case of pending/concluded adjudication or appeal proceedings related to the transitional forms, the officer should consider the relevant facts in the notice/order, and the grounds/reasons for the inadmissibility of transitional credit.
- The counterpart officer (CO) shall submit the verification report to the counterpart JO within ten days from the date of receipt of the request.
- In case the JO finds the transitional credit is partially or wholly inadmissible, it shall issue a notice to the applicant within a period of seven days from the receipt of report from the CO.
- The JO may seek comments of the CO w.r.t the submission relating to the tax (central or state) being administered by such CO.
- The JO shall pass a reasoned order within fifteen days from the date of personal hearing, after considering the facts of the case, verification report received for CO, submissions made by the applicant, comments from CO.
- The order, specifying the amount of transitional credit allowed to be transferred to the ECRL, shall be uploaded on the common portal.
- The order must be passed within a period of ninety days from 1 December 2022, i.e., up to 28 February 2023.
- In a case where the amount of admissible credit in terms of revised form exceeds the amount as per the original form, the excess credit is liable to be demanded and recovered along with interest and penalty.

Our comments

The SC directed that the jurisdictional tax officer must verify the transitional credits filed by the applicants within 90 days of closing of the opportunity for filing /revising of the forms. Such credit filed by the applicants in the transitional forms will be provisional, which shall be finalised and credited in the ECRL post verification only. Therefore, the applicants need to be cautious while filing/revising the transitional forms, to avoid any rejection or loss of credit during the verification.

Further, the guidance note issued by the CBIC shall be helpful for the tax officers enabling them to verify the credit reported in different tables of the form TRAN-1. The suggested checks should be looked into by the taxpayers as well in order to maintain the documents ready to be provided to the authorities, if required.

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